

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
CHATTANOOGA DIVISION

FILED

2012 AUG 27 PM 12:59

U.S. DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

UNITED STATES OF AMERICA,

Respondent,

vs.

MATTHEW BROCK,

Movant.

Cause No. 1:06-CR-75-001

Civil Action No:

Time: _____

Date: _____

Place: _____

United States District Court
Eastern District of Tennessee
Joel W. Solomon Federal Building, United
States Courthouse
900 Georgia Avenue,
Chattanooga, TN. 37203

NOTICE OF MOTION

PLEASE TAKE NOTICE, that upon the annexed duly verified affidavit of Matthew Brock, hereinafter referred to as Movant, acting in pro se status in the above styled and entitled cause of action, and on all papers and proceedings submitted herein, the undersigned will move this Court on the appointed date, at the appointed time and at the appointed place, United States District Court, Eastern District of Tennessee, Joel W. Solomon Federal Building, United States Courthouse, 900 Georgia Avenue-Chattanooga, Tennessee 37402, the above captioned, Matthew Brock will move the court for an Order pursuant to the provisions of Title 28 U.S.C. Section 2255, to Vacate, Set Aside or Correct the Thirty-six (36) month sentence the court imposed on December 15, 2011.

1 The motion will be made on the grounds that (1) the Movant was denied the
2 effective assistance of counsel in violation of the Sixth Amendment of the
3 Constitution of the United States;

4
5 (2) the Movant's sentence is as a direct result of a misapplication of the federal
6 sentencing guidelines and (3) and the ends of justice would be promoted by
7 reducing the imposed term..

8
9 The motion will be based on this Notice of Motion, on the attached
10 Memorandum of points and authorities, on the attached declaration of Matthew
11 Brock, and on all the papers, pleadings, and records on file in this action.

12 Dated this 31 day of July, 2012.

13
14 
15 MATTHEW BROCK
16 MOVANT, PRO SE

17 FED.REG. #41599-074
18 FCI TERRE HAUTE
19 SATELLITE CAMP
20 P.O. BOX 53
21 TERRE HAUTE, IN. 47408
22
23
24
25
26

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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED

v.

- N/A**

N/A

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☐ No ☒
9. If you did appeal, answer the following:

(a) Name of court: N/A

(b) Docket or case number (if you know): N/A

(c) Result: N/A

(d) Date of result (if you know): N/A

(e) Citation to the case (if you know): N/A

(f) Grounds raised: N/A, NO SUBSEQUENT APPEALS HAVE BEEN FILED.

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

(1) Docket or case number (if you know): N/A

(2) Result: N/A

(3) Date of result (if you know): N/A

(4) Citation to the case (if you know): N/A

(5) Grounds raised: N/A, NO SUBSEQUENT PETITION FOR CERTIORARI HAS BEEN FILED.

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒

(7) Result: N/A

(8) Date of result (if you know): N/A

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: NO SUBSEQUENT PETITIONS/APPLICATIONS HAVE BEEN FILED.

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒

(7) Result: N/A

(8) Date of result (if you know): N/A

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☐ No ☒

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: **MOVANT DID NOT FILE ANY MOTIONS FOR REDRESS REGARDING THE ISSUES SURROUNDING THE CIRCUMSTANCES OF HIS INCARCERATION. THE ISSUES ARE APPROPRIATELY PRESENTED HEREIN FOR THE FIRST TIME.**

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: **MOVANT WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE SIXTH AMENDMENT OF THE CONSTITUTION.**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): **MOVANT BROCK SUBMITS THAT COUNSEL'S PERFORMANCE FELL BELOW THE REASONABLE OBJECTIVE STANDARDS AS REQUIRED TO GIVE RISE TO MEANINGFUL ADVOCACY. MOVANT SUBMITS THAT COUNSEL FAILED TO REPRESENT AND PROTECT HIS INTERESTS IN THE CASE AT BAR. HE SUBMITS THAT COUNSEL MISADVISED HIM AS TO THE PRUDENCE OF ENTERING A GUILTY PLEA TO ALL OF THE TECHNICAL VIOLATIONS LISTED IN THE COMPLAINT INSTEAD OF THE ONES THAT ACTUALLY APPLIED TO HIM. WHILE COUNSEL DID ADVISE MOVANT OF SOME OF THE OPTIONS AVAILABLE TO THE COURT IF HIS SUPERVISION WAS REVOKED SHE DID NOT ADVISE HIM OF THE FULL RANGE OF CONSEQUENCES, THE MAXIMUM OF THREE YEARS INCARCERATION. THE SENTENCING GUIDELINE RANGE REFLECTED A MUCH LESSER TERM FOR THE VIOLATIONS. HOWEVER SHE SHOULD HAVE ADVISED HIM OF THE FULL RANGE OF CONSEQUENCES PRIOR TO ENTERING THE PLEA TO ALL VIOLATIONS OUTLINED. THAT THE COURT COULD IMPOSE THE MAXIMUM TERM OF THREE YEARS. HE WAS NOT PROPERLY ADVISED BY COUNSEL.**

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: **MOVANT DID NOT APPEAL, BASICALLY BECAUSE OF THE LACK OF ENCOURAGEMENT ON THE PART OF COUNSEL.**

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

- (2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: NO APPEAL WAS FILED REGARDING MATTER.

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: MOVANT SUBMITS THAT ISSUES SURROUNDING THE INEFFECTIVENESS OF COUNSEL OF COUNSEL ARE MORE APPROPRIATELY RAISED IN COLLATERAL ATTACK/POSTCONVICTION DUE TO THE ABILITY TO EXPAND THE RECORD.

GROUND TWO: MOVANT WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE SIXTH EMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): MOVANT SUBMITS THAT THE MANNER IN WHICH COUNSEL FAILED TO ACT AS A MENINGFUL ADVOCATE PREJUDICED HIM IN THE EYES OF THE COURT.MOVANT CONTENTS THAT DESPITE THE PREMISE OF WHAT THE OUTCOME MAY BE, COUNSEL HAD A DUTY TO INVESTIGATE THE CIRCUMSTANCES SURROUNDING SOME OF THE ALLEGATIONS, AND PRESENT ANY MITIGATING EVIDENCE THAT MAY HAVE THE IMPACT OF ANY TERM PENDING IMPENDING. THIS IS ESPECIALLY TRUE IN LIEU OF THE FACT THAT MOVANT HAD EXPRESSED TO COUNSEL THAT SOME OF THE ALLEGATIONS OUTLINED IN THE COMPLAINT WERE NOT TRUE. COUNSEL FAILED IN HER DUTY AS AN ADVOCATE IN REPRESENTING THE MOVANT'S INTEREST BY NOT INVESTIGATING EACH VIOLATION , PREPARING A DEFENSE, AND PRESENTING MITIGATING FACTORS REGARDING THE ONES HE ADMITTED WERE TRUE, AND CHALLENGING WITH EVIDENCE, THE ONES HE DENIED. IN THE CASE AT BAR, SUPPORTING DOCUMENTATION WAS AVAILABLE AND ACCESSIBLE TO COUNSEL.

**COUNSEL ABDICATED HER DUTIES AS A LEGAL REPRESENTATIVE IN THE CASE AT BAR AND HER
FAILURE TO ACT AS AN ADVOCATE SIGNIFICANTLY PREJUDICED THE MOVANT.**

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: **MOVANT DID NOT FILE A
DIRECT APPEAL. ISSUES REGARDING THE INEFFECTIVE ASSISTANCE OF COUNSEL ARE MORE
APPROPRIATELY RAISED IN A POSTCONVICTION MOTION UNDER 2255.**

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: **NO PREVIOUS PETITIONS HAVE BEEN FILED.**

Name and location of the court where the motion or petition was filed: **N/A**

Docket or case number (if you know): **N/A**

Date of the court's decision: **N/A**

Result (attach a copy of the court's opinion or order, if available): **N/A**

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: **N/A**

Docket or case number (if you know): **N/A**

Date of the court's decision: **N/A**

Result (attach a copy of the court's opinion or order, if available): **N/A**

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: **ISSUES SURROUNDING THE INEFFECTIVENESS OF COUNSEL ARE ENTERTAINED IN POSTCONVICTION (2255) PROCEEDING DUE TO THE OPPORTUNITY TO EXPAND THE RECORD.**

GROUND THREE: MOVANT WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE SIXTH AMENDMENT OF THE CONSTITUTION.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): **COUNSEL BASICALLY ABANDONED THE CASE IMMEDIATELY AFTER SENTENCING, FAILING TO ADDRESS WHETHER OT NOT MOVANT COULD,SHOULD APPEAL THE TOTALLY UNEXPECTED TERM IMPOSED BY THE COURT. COUNSEL WS CONSISTENTLY UNAVAILABLE, DESPITE FREQUENT CALLS TO HER ABOUT THE POSSIBILITY OF FILING AN APPEAL UNTIL THE DATE TO FILE HAD PASSED.**

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: **MOVANT DID NOT APPEAL.**

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: **N/A**

Name and location of the court where the motion or petition was filed: **N/A**

Docket or case number (if you know): **N/A**

Date of the court's decision: **N/A**

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: **MOVANT DID NOT APPEAL. ISSUES SURROUNDING THE INEFFECTIVENESS OF**

ARE PRIMARILY RAISED IN A POSTCONVICTION (2255) PROCEEDING.

GROUND FOUR: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: _____

N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: **NO PREVIOUS MOTIONS HAVE BEEN FILED.**

Name and location of the court where the motion or petition was filed: **N/A**

Docket or case number (if you know): **N/A**

Date of the court's decision: **N/A**

Result (attach a copy of the court's opinion or order, if available): **N/A**

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: **NO APPEAL WAS FILED.**

Docket or case number (if you know): **N/A**

Date of the court's decision: **N/A**

Result (attach a copy of the court's opinion or order, if available): **N/A**

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not presenting them: NONE OF THE GROUNDS PRESENTED HEREIN HAVE BEEN PREVIOUSLY

PRESENTED IN ANY FEDERAL PROCEEDING OF ANY KIND.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☒ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) ~~At preliminary hearing:~~ XXXXXXXXXX

(b) At arraignment and plea: _____

(c) At trial: N/A

(d) At sentencing: HALLIE MCFADDEN, ATTORNEY

P.O. BOX 546-SIGNAL MOUNTAIN, TN. 37377

(e) On appeal: **N/A -NO APPEAL WAS FILED.**

(f) In any post-conviction proceeding: **N/A**

(g) On appeal from any ruling against you in a post-conviction proceeding: **N/A**

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: **N/A**

(b) Give the date the other sentence was imposed: **N/A**

(c) Give the length of the other sentence: **N/A**

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

THAT THE COURT WILL CONSIDER REDUCING THE TERM OF IMPRISONMENT BY 12 TO 18 MONTHS BASED ON THE ISSUES RAISED, THE SUPPORTING ARGUMENTS, AND DOCUMENTATION PROVIDED AS EXHIBITS REFLECTING THAT THE MAJORITY OF THE VIOLATIONS MOVANT PLEADED TO UNDER THE ADVISEMENT OF COUNSEL, WERE NOT AS PRESENTED TO THE COURT.

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct

and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on

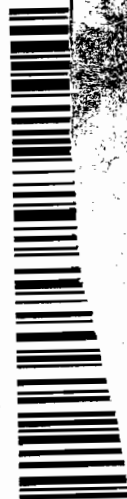
_____ (month, date, year).

Executed (signed) on 7/31/12 (date).



Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.



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